

REMARKS

Claims 1-3, 7-14, 17, and 21-25 are pending in the Application. Claim 1 is independent.

Applicants wish to thank the Examiner for alerting the Applicants to the error in the priority claim. The specification of the instant application has been amended to recite the proper priority claim.

Rejection Under § 103(a)

Claims 1-3, 7-14, 17, and 21-25 were rejected as allegedly unpatentable over Ackley (US Pat. No. 6,287,517) in view of Ovshinsky (US Pat. No. 4,843,443).

Applicants' respectfully traverse this rejection because the Ackley '517 reference was filed on December 4, 1996 and issued on September 11, 2001, thereby rendering the Ackley '517 reference 102(e) prior art to the instant application. As 102(e) prior art, the Ackley '517 reference cannot properly be considered 103(a) prior art pursuant to 103(c). The instant application and the Ackley '517 reference are both assigned to Nanogen.

Even as a 102(e) reference, the Examiner admits that the Ackley '517 reference fails to teach or disclose an array comprising row and column selectors. Moreover, the instant application claims priority as a continuation-in-part to US Pat. No. 6,099,803 ("the '803 patent".) The '803 patent describes the present invention, for example, in Figures 9-10 and in col. 13:37 to col. 14:17.

The Accordingly, Applicants respectfully request removal of this rejection.

Double Patenting Rejection

Claim 1 was rejected as allegedly unpatentable over claim 1 of the '803 patent under

the judicially created doctrine of obviousness-type double patenting. Applicants respectfully traverse this rejection. Claim 1 of the '803 patent is directed to an electronic device for performing biological operations and includes a collection electrode, focusing electrodes, and a counter electrode. Claim 1 of the instant application, however, is directed to a completely different invention. More specifically, claim 1 of the instant application is directed to an electronic circuit having first and second column and row select transistors.

Rejection Under § 102(f)

Claim 1 is currently rejected as unpatentable under § 102(f). Applicants respectfully traverse this rejection. As explained above in the section relating to the double patenting rejection, claim 1 of the instant application is patentably distinct from claim 1 of the '803 patent. Moreover, a rejection under §102(f) is improper because inventors Ackley and Graham (of the instant invention) are named inventors on the '803 patent. And, as described above, the instant application is properly described (and claims priority to) in the '803 patent, which the Examiner admits in paragraph 8 of the Office Action.

Applicants believe that no fees, with the exception of those associated with a 3 month extension of time, are required in this case. However, in the event fees are required, the Office may charge Deposit Account No. **50-2862**.

If the Examiner has any questions regarding this communication, he is invited to
contact the undersigned at (949) 760-9600.

Respectfully submitted,

O'MELVENY & MYERS LLP

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